

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:08-CR-18-FL-2
5:12-CV-126-FL

HEATHER DIANE STEWART,)	
)	
Plaintiff,)	
)	
v.)	
)	ORDER
UNITED STATES OF AMERICA)	
)	
Respondent.)	
)	
)	

This matter is before the court on the Memorandum and Recommendation (“M&R”) of United States Magistrate Judge William A. Webb, recommending that petitioner's motion to vacate under 28 U.S.C. § 2255 [DE 80] be denied and respondent's motion to dismiss [DE 84] be granted. No objections to the M&R have been filed, and the time within which to make any objection has expired. This matter is ripe for ruling.

The court hereby ADOPTS the recommendation of the magistrate judge as its own, and, for the reasons stated therein, petitioner’s motion is DISMISSED AS MOOT, defendant’s motion is GRANTED, and this matter is DISMISSED for the reasons stated in the M&R.

Having determined petitioner is not entitled to relief and the government is entitled to dismissal of the petition, the Court considers whether petitioner is nonetheless entitled to a certificate of appealability. See 28 U.S.C. § 2253(c). Where a petitioner's constitutional claims are dismissed on procedural grounds, a certificate of appealability will not issue unless the petitioner can demonstrate both "(1) ‘that jurists of reason would find it debatable whether the petition [or motion]

states a valid claim of denial of a constitutional right' and (2) 'that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.'" Rose v. Lee, 252 F.3d 676, 684 (4th Cir.2001) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)). After reviewing the petition, the court finds that the applicable standard has not been met. Accordingly, a certificate of appealability is denied.

The clerk of court is directed to close the case.

SO ORDERED, this the 20th day of February, 2013.

A handwritten signature in black ink, reading "Louise W. Flanagan". The signature is written in a cursive, flowing style.

LOUISE W. FLANAGAN
United States District Judge